IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.93 OF 2006

IN

SUIT NO.805 OF 2003

...

Minaxi Kishor Mehta ...Plaintiff

v/s.

M/s.Amrutlal Dhirajlal & Co.

and ors. ...Defendants

...

Mr.B.B.Saraf with Ms.Shaikh i/b S.K.Srivastava & Co. for the Plaintiff.

Mr.Rajesh Jain i/b Mr.Tushar Goradia for Defendants Nos. 1 & 2.

Mr.Darshan Mehta i/b Dhruv Liladhar & Co. for the Defendant No.5.

Ms.Anu Singh i/b M.K.Ambalal & Co. for Defendant No.3.

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CORAM: D.K.DESHMUKH, J.

DATED: 18TH JULY, 2006

P.C.:

1. Though initially the Plaintiff has filed the suit on the basis of bills of exchange at Exh.A-1, Exh.A-2, and Exh.A-3, the Plaintiff now relies and bases her claims on the basis of cheques which admittedly were issued by the Defendants in favour of the deceased Plaintiff, copies of which are at Exh.B-1, B-2 and B-3.

2. So far as suit claim which is based on cheques which were admittedly given by the Defendants, only defence is that those cheques were never presented to the Bank.

3. There is admittedly criminal complaint going on between the same parties in relation to the same transaction. The learned Counsel appearing for the

Plaintiff pointed out to me that dishonour memo issued by the Bank in relation to cheques have been filed on record of the criminal complaint.

4. In this view of the matter obviously there is no substance in the defence that is raised. So far as the defence raised on the basis of the provision of Section 214 of the Succession Act is concerned, it has no substance, because the provision does not prevent the court from passing a decree in such a situation. In this very suit in Chamber Summons No.878 of 2005 an order dated 31st August, 2005 has been made by this Court protecting the interest of heirs of the deceased Plaintiff. Thus, there is no substance in the defences raised on behalf of the Defendants. Summons for judgment is, therefore, granted. Suit of the Plaintiff is decreed in terms amended prayer clauses of the suit. Refund of court fees as per rules.

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